

To cover or not to cover – Covered Parties/Additional Covered Parties

Purpose:

There are numerous reasons why a Public Risk Innovation, Solutions, and Management (PRISM) Member will want or need to add another entity for coverage under their Memorandum of Coverage (MOC) or policy (depending on the program). As will be described later in this document, and depending on the relationship involved, coverage afforded may be for all operations of the other entity or for specific operations only. Accurately identifying these situations and correctly adding them to the necessary programs is critical to assure that the necessary protection for both the Member and the other entity is afforded.

Some entities may have been added to your coverage many years ago. Keep in mind that just because it made sense for your agency then, does not necessarily mean your agency still wants or is required to cover that entity today. **It's important to continue to annually evaluate whether that extension of coverage is still appropriate.** This may require significant research at first, but it is extremely important that the research be conducted because the entity that is currently added for coverage may no longer exist, have a very different operation now (potentially one your agency does not want to continue to cover), or the relationship with your entity may no longer be the same.

Over the years, the annual renewal process has included a request that each member identify the covered parties they need added as well as the coverage needed for them. Unfortunately, we have found that this has been handled inconsistently among the membership. The purpose of this communication is to ensure that you have an understanding of who is considered a covered party to your coverage, as well as, ensuring that you identify all of their exposures. Additionally, our goal is to have this information reviewed prior to the launch of the new Named Covered Party Tool on PRISM's website. This will also include the historical notes and backup for future reference.

As you read through this document, here are some important things to consider:

- It is imperative that you review the covered parties listed on your policies and MOC for each line of coverage on an annual basis at a minimum. However, if anything changes during the year (such as the governance structure of an entity, and/or a change in your entity's desire to extend coverage to the other entity, etc.), be sure to reach out to request such amendments to your coverage documents as these changes occur. It is also essential to review the entities that have historically been named to ensure that the need is still warranted.
- Be sure to check the details of coverage in place for each entity to confirm that it meets the needs of the entity (i.e. GL, auto, E&O and EPLI). If coverage is placed for an entity outside of PRISM, keep in mind that coverage may not necessarily mirror that which is provided by PRISM.
- Full knowledge of who and what the full relationship is between the Member and any other Covered Party or Additional Covered Party has to be reviewed by appropriate individuals and your governing board before the request to add an entity to the Members coverage.

The difference between a Covered Party and an Additional Covered Party:

In standard traditional insurance, the entity purchasing a policy is typically referred to as the first named insured. Additionally, entities that the first named insured takes full responsibility for are typically called an additional named insured, and those that the first named insured are required to indemnify via a contract or agreement are referred to as additional insureds. PRISM refers to these entity types or titles slightly differently since PRISM is a governmental entity and not insurance. See the table below for the titles and their equivalents:

	Standard Traditional Insurance	PRISM	Role/Responsibility
1.	First Named Insured	Member	Responsible for paying self-insured retention (SIR) and premium. Responsible for reporting exposure and claims. Can cancel the policy/coverage.
2.	Additional Named Insured	Covered Party	Full access to policy/coverage. Reports exposure and claims to member. Cannot cancel the policy/coverage.
3.	Additional Insured	Additional Covered Party	Only access/limited to policy/coverage per contract or agreement

For ease throughout this document, we will refer to PRISM terminology as shown in the above table.

- 1) The First Named Insured or Member of PRISM (#1 in the table above) is the agency that has purchased the insurance policy or that executed the Joint Powers Agreement with PRISM.
- 2) An Additional Named Insured or Covered Party (as referenced as #2 in the table above) on the other hand, is an entity which has been named on the Member's MOC or policy and is afforded all the coverage provided under the MOC or policy for all of their operations. The Member takes full responsibility for the Covered Party, such as premium payment, cancellation of coverage, reporting claims and exposure, and satisfying any applicable self-insured retention (SIR) or deductible. This type of entity is often one which has been created for the benefit of the Member or where there is a very close relationship between the entities. This could be an entity such as a Special Corporation (usually non-profit) which was set up to fund a building project so that certain funds would be made available or through the issuance of bonds. This could also be an entity you are required to cover by way of a Memorandum of Understanding (MOU) or other agreement. These types of entities are often a part of your budget and annual financial report and are usually under the supervision or governance of the Member's Board of Supervisors, City Council or Board. Often the definition of Covered Party in the Member's MOC

or policy will automatically extend coverage to these types of entities without the need to specifically “name” the entity as a Covered Party (i.e. GL1 and GL2 Program MOC). Another example would be the member agencies of a Joint Powers Authority.

- 3) An Additional Insured or Additional Covered Party (referenced as #3 in the table above) is an individual or entity that requires your entity to indemnify them per the terms of a contract or agreement (i.e. owners of property being leased by member). When required, the additional covered party is extended coverage under the member’s MOC by way of the additional covered party endorsement. One thing to note, **is that coverage provided is normally limited to liability arising out of the operations performed by or on behalf of you for the additional covered party. The additional covered party should have their own insurance coverage for liability arising from their own operations.** Additionally it should be noted that the MOC automatically provides coverage for liability assumed under contract by the Member regardless of whether or not the other party has been added as an additional covered party.

Note: Each program has its own definition of a covered party, as well as applicable exclusions. Please refer to each coverage policy for details. If you have any questions or need for clarification, please reach out to either Alliant or PRISM. The Covered Party definition from the General Liability 1 (GL1) MOC and Named Insured definition from the Crime policy are shown below as examples:

GL1:

A. The Member;

B. Those individuals, including volunteers, who were or are now elected or appointed officials of the Member, whether or not compensated, including members of the Member's governing body or any other committees, boards, commissions or special districts of the Member, while acting for or on behalf of the Member;

C. All special districts **governed directly** by the Member’s governing board and other districts or agencies which are named on the Memorandum;

D. Past or present employees of the Member, including volunteers, or other covered entities, whether or not compensated, while acting for or on behalf of the Member or other covered entity;

E. Notwithstanding sub-paragraphs (A) through (D) above, the determination and findings made in good faith by the Member pursuant to California Government Code Section 995.2 or any other similar provision of law shall be conclusive and binding on the Authority and all other persons for the purposes of coverage under the Memorandum; and

F. 1937 Act Retirement Association of the Member County and the San Luis Obispo County Pension Trust.

As respects the above **covered parties**, this Memorandum does not cover the breach of fiduciary duty which means:

1. Violation of any of the responsibilities, obligations or duties imposed upon

fiduciaries by:

- a.) The Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto; or
- b.) The common or statutory law of the United States of America, or of any state or other jurisdiction therein; and

2. Negligent acts, errors or omissions in administration.

Administration as used herein shall mean:

- a.) Giving counsel to participants and beneficiaries with respect to a **plan**;
- b.) Interpreting a **plan**;
- c.) Providing or failing to provide benefits under a **plan**;
- d.) Handling the records connected with a **plan**; and
- e.) Effecting enrollment, termination or cancellation of participants under a **plan**.

Crime:

1. The Item of the DECLARATIONS entitled NAMED INSURED is amended by addition of the following:

ALL AGENCIES, AUTHORITIES, NON-PROFIT CORPORATIONS, ASSOCIATIONS, DEPARTMENTS AND DISTRICTS (INCLUDING SPECIAL DISTRICTS) WHICH ARE GOVERNED DIRECTLY BY THE GOVERNING BODY OF ANY ONE OF THOSE NAMED AS INSURED, AND OTHER INTEREST HEREAFTER OWNED, CONTROLLED OR OPERATED BY ANY OF THOSE NAMED AS INSURED.

*policy also extends coverage to any Employee Welfare or Benefit Plans

Who can/should be added as a Covered Party (reference #2 in table)?

As described above, individuals or entities that are closely related to the Member can and often should be added to the Member's MOC or policy. Some examples might include:

- County/City affiliated service districts, such as community services districts, fire districts, water districts, housing authorities, etc.
- Non-profit corporations with a close relationship with your entity (such as a financing corporation)

Adding a Covered Party is not automatic. In most cases, a completed application, loss data, and a resolution from your governing board or council accepting responsibility of the Covered Party (including payment of premium and self-insured retention/deductible, reporting of exposure and claims, etc.) will be needed. In addition, the Covered Party will need to be approved by PRISM and/or the carrier underwriter **before** coverage is provided. ***Please note that backdating coverage is usually not available, so if at all possible these requests should be submitted with sufficient time prior to the date coverage should take effect for the Covered Party so that all appropriate approvals can be obtained.***

As respects General Liability under the GL1 and GL2 MOC's, the definition of Covered Party automatically provides coverage to special districts that have the same exact governing board as the

Member, and therefore do not need to be added by endorsement to the MOC or policy as a Covered Party in order for coverage to apply.

Under the Excess Workers' Compensation MOC, coverage is provided for the covered Member's employees. However, if payroll is provided by a separate legal entity, a valid and enforceable agreement between the Member and the other entity must exist, and the other entity should be named as a Covered Party on the Member's MOC in order for the Member's coverage to apply. In order to cover volunteers under workers' compensation, the Member must have adopted a resolution (as provided in Division 4, Part 1, Chapter 2, Article 2, of the California Labor Code) declaring such volunteer workers to be employees prior to the date of injury. ***Please note, the separate legal entity must also be added to the Member's Certificate of Consent to Self Insurance issued by the State of California, Office of Self Insurance Plans (OSIP). Please refer to OSIP for their requirements.***

When reviewing, and before adding a Covered Party (as referenced as #2), you want to make sure that you always cross reference the entity to your other lines of coverage. Below are a few questions you should keep in mind or address:

- Does your entity (the Member) intend on taking responsibility for covering this entity (Covered Party) in its entirety, as well as taking responsibility for the entity's self-insured retention/deductible?
- Can you legally assume the liability for this entity? Does the entity exist for the benefit of the Member?
- Does this entity have other exposures that need to be addressed? If coverage is not automatically provided, you should evaluate whether or not the entity should be added as a Covered Party under various coverage lines where exposure exists, or if coverage has been placed elsewhere.
 - o Example: Request to add an entity to General Liability and discover that this entity owns property and directly handles funds. This confirms that they additionally have property and crime exposure. First confirm if they have coverage placed elsewhere or if they need to place coverage for those exposures.
- If the entity you are looking to add as a Covered Party is a separate legal entity, is there a Memorandum of Understanding (MOU) or agreement in place stating that your entity is responsible to provide insurance for them? And if so, is this for all exposure or only specific lines?
- Some public entities provide operational aspects for other public entities that were created to be in control and the gatekeeper of funds. In these situations liability in connection with the actual operations would be with the public entity that is doing the work, and they should add the other entity as an additional covered party for their work for them.
- Any and all contracts that may exist between the Member and the Additional Covered Party (as referenced as #3) should be reviewed. Are they service contracts, agreements for specific work for the Member, or are they some type of quasi-public entity that was set up for a specific



function that only relates to the Member? Other things to consider are where the funds are coming from, who is the actual employer, etc.?

- The GL1 MOC is very broad in comparison to other forms. When adding an entity as a Covered Party, is it your intent to provide that entity coverage for Employment Practices Liability, Public Officials E&O and Auto Liability in the MOC? Be sure to thoroughly compare what the contract requirement or agreement is compared to what coverage you have in place.

The above mentioned examples and scenarios do not cover any and all situations that your entity may come across and should consider. The intent of this communication is to certify that your entity is contemplating all possibilities when evaluating coverage for you, your covered parties and your additional covered parties. If at any point you are unsure if you should add an entity to your coverage, please do not hesitate to reach out to PRISM or Alliant Insurance Services, Inc.